

Remarks

All of the rejections are improper because the Final Office Action has misinterpreted various claim limitations, including those directed to validating an error report from a reporting node and to reporting unsuccessful data transmissions. In short, the Examiner has confused source nodes with recipient nodes, and further confused the confirmation of a *successful* download with a response to an *unsuccessful* download. Moreover, the cited pass/fail characteristics pertaining to node validity does not provide any degree of measure of trustworthiness for subsequent node use as claimed. The Office Actions of record have also impermissibly ignored Applicant's traversals regarding the above and other matters, in relying upon an erroneous citation to case law that is inapplicable to Applicant's traversals and contrary to the M.P.E.P. The following addresses these matters in greater detail.

In the Final Office Action dated January 7, 2009, the following rejections are indicated: claims 1-29 and 32-34 stand rejected under 35 U.S.C. § 102(e) over the Yu reference (U.S. Patent Pub. 2003/0061287); and claims 30-31 stand rejected under 35 U.S.C. § 103(a) over the '1287 reference in view of the Ritchie reference (U.S. Patent Pub. 2002/0194319). As previously stated, the Final Office Action appears to have repeated all claim rejections from the prior Office Action of record. The Advisory Action failed to address the majority of Applicant's response filed on March 9, 2009. Applicant therefore maintains the traversals of record, and submits that the (uncontested) record has established that the cited portions of the '1287 reference do not correspond to the claimed invention. Accordingly, Applicant traverses all rejections and further does not acquiesce to any rejection or averment unless Applicant expressly indicates otherwise.

The § 102(e) rejections are improper because the cited portions of the '1287 reference fail to provide correspondence to multiple claim limitations, including those directed to validating a receiving node and/or an error report as generated by such a receiving node. Specifically, the '1287 reference addresses data communication errors involves eliminating unreliable nodes and reporting successful downloads (*see, e.g.*, step 138 in Fig. 3C, and paragraph 0042). The described reliability relates to a node's ability to transmit a file as relative to speed and connectivity (*see, e.g.*, paragraph 0007). Based

upon each (source) node's ability to transmit files, source nodes are eliminated to promote the speed at which data can be transmitted across multiple nodes, as consistent with the '1287 reference's stated purpose (*see, e.g.*, paragraphs 0008-0010). To facilitate this purpose, successful downloads are reported (item 152 of FIG. 3D), and a pass/fail approach is used to eliminate source nodes (*see, e.g.*, paragraph 0045).

In this context, the cited portions of the '1287 reference are wholly unrelated to various aspects of the claimed invention, including those directed to determining the validity of individual error reports from reporting nodes that identify erroneous transmissions (*see, e.g.*, claims 5-19, 21-29 and 32-34), and to those directed to using reliability characteristics of the reporting nodes (*see, e.g.*, claims 16-18, 23-24 and 27). Referring to claim 12 by way of example, the claimed degrading of a trustworthy-measure is "associated with the reporting node" that receives an information file from a source node and that generates a report based upon that file. Accordingly, the cited source-node based assessment and elimination in the '1287 reference does not correspond to the claimed approach to grading reporting nodes and related report validation. For instance, paragraphs 0020 and 0025 of the '1287 reference, cited in connection with the rejection of claim 12, are not concerned with determining a trustworthy characteristic of a reporting node, and do not mention anything about assessing a report. The portions of the '1287 reference cited with the rejections of claims 17 and 18 similarly fail to provide specific correspondence to limitations directed to assessing the reliability of a reporting node in "determining the validity of the report." That is, the alleged node reliability determination relative to cited figures 3C and 3E (and at paragraph 0009) is made based upon the ability of a node to deliver content, and has no bearing upon a report or validity of such a report.

The cited portions of the '1287 reference also fail to provide correspondence to various other limitations, including those directed to the detection of a degree of trustworthiness related to data modification, which can be effective irrespective of a node's ability to deliver data. Referring to claim 1, the cited speed and connectivity functions in the '1287 reference provide no correspondence to a trustworthy-measure based upon the actual content of the file (*i.e.*, has the file been modified). In addition, the "report" in cited FIG. 3D of the '1287 reference provides no correspondence to the

claimed “transmitting an error report” in claim 1, which is made “when at least one of the following occur: the associated code does not correspond to the identifying code, and the content of the information file is abnormal; thereby facilitating a reduction of the trustworthy-measure associated with the source node.” As relevant to claim 1 and explicitly recited in claim 2 (as amended), the ‘1287 reference does not determine “that the difference was not caused by a communication error” and transmits an error code when “the target determines that the difference was not caused by a communication error.” Rather, the ‘1287 reference is directed specifically to detecting such a communication error. Accordingly, the cited “report” in item 152 of FIG. 3D is unrelated to the claimed approach to reporting abnormal or otherwise erroneous communications, as may relate to intentional data corruption.

The cited portions of the ‘1287 reference further fail to provide correspondence to limitations directed to determining a measure (degree) of trustworthiness and using a node after it has been degraded according to the trustworthiness (*e.g.*, as consistent with amended claim 6). As discussed above, the ‘1287 reference determines that a node is either good or bad, and provides no measure or degrading of a measure, and instead eliminates those nodes that fail its pass/fail test. The Final Office Action’s attempt to interpret the claimed measure of trustworthiness, and the grading of such a measure as involving a pass/fail type characteristic directly contradicts Applicant’s specification and any reasonable interpretation. This interpretation directly contradicts the requirements of M.P.E.P. § 2011, which indicates “the pending claims must be ‘given their broadest reasonable interpretation consistent with the specification” in citing *Phillips v. AWH Corp.*, 415 F.3d 1303, (Fed. Cir. 2005). The ‘1287 reference thus provides no correspondence to limitations directed to “degrading a trustworthy-measure” as in claims 5 and 10. Moreover, as the ‘1287 reference eliminates nodes (rather than downgrades), it fails to provide correspondence to limitations directed to subsequently accessing nodes that have been degraded as in claim 13.

In view of the above, the § 102(e) rejection of claims 1-29 and 32-34 is improper because the ‘1287 reference fails to disclose various limitations in each of the claims. Applicant further submits that the § 103(a) rejection of claims 30-31 is improper because the rejection relies upon the above-discussed misinterpretation of the primary ‘1287

reference, such that the combination of the secondary '4319 reference with the '1287 reference also fails to provide teaching or suggestion of all limitations in claims 30-31.

Applicant further submits that the § 103 rejection is improper because the '1287 reference teaches away from the proposed combination of references, or to any combination of references with the '1287 reference made to arrive at the claimed invention. As consistent with M.P.E.P. § 2143.01, *KSR Int'l Co. v. Teleflex, Inc.*, 127 S. Ct. 1727, 1742 (2007), and *In re Gordon*, 733 F.2d 900 (Fed. Cir. 1984), a §103 rejection cannot be maintained when the asserted modification undermines purpose of the main reference, and such teaching away is evidence of non-obviousness. In *KSR*, the Supreme Court looked favorably on the treatment of teaching away stating, "when the prior art teaches away from combining certain known elements, discovery of a successful means of combining them is more likely to be non-obvious." In this instance, the '1287 reference eliminates nodes based upon data transmission errors. Accordingly, the '1287 reference teaches away from the claimed approach to generating an error report that is specifically made to avoid reporting data transmission errors (*i.e.*, "upon determining that the information file errors were caused during transmission" as in claim 31), which can facilitate the detection of malicious tampering. This is specifically relevant to claims 2, 15, 21 and 26 (as amended), and to claims 30-31 (as previously presented), which are directed to ignoring data transmission errors to explicitly identify data tampering. The § 103(a) rejections of claims 30-31 are therefore also improper for these reasons, and should be removed.

In addition to the above, Applicant notes that the Office Actions of record have repeatedly ignored Applicant's traversals, based upon a misapplied citation to *In re Van Geuns* and a misguided assertion that "limitations from the specification are not read into the claims." This basis for ignoring Applicant's arguments is untenable because Applicant's reference to the specification was exemplary, and further because the traversals make clear those claim limitations that are not disclosed in the cited references. Specifically, Applicant's traversals included reference to the instant specification in an effort to assist the Examiner's understanding of the claimed invention, and to explain the lack of correspondence provided by the cited references. Such reference to the specification is not only permissible, it is encouraged under the M.P.E.P. and applicable law. The above discussion clearly points out those limitations to which no

correspondence has been provided. Applicant requests that the Examiner address and respond to Applicant's traversals of record and as discussed herein, as required under M.P.E.P. § 707.07(f).

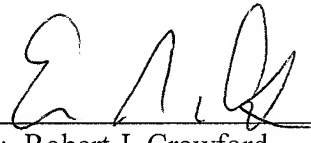
In addition to the claim amendments discussed above, Applicant has made various minor stylistic amendments, and amendments for consistency relative to other claims. Applicant believes that these stylistic amendments do not change the scope of the claims.

In view of the above, Applicant believes that each of the rejections has been overcome and the application is in condition for allowance. Should there be any remaining issues that could be readily addressed over the telephone, the Examiner is asked to contact the agent overseeing the application file, Peter Zawilski, of NXP Corporation at (408) 474-9063.

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